

REMARKS

Claims 24-32 and 34-38 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 24,25 and 35-37, drawn to a first method – a method of treating a tumor with an extract of *Lentinus edodes* mycelium,;

Group II, claims 26-32 and 34, drawn to a second method – a method of treating a bacterial or viral disease with an extract of *Lentinus edodes* mycelium; and

Group III, claim 38, drawn to a method of activating gamma delta T in vivo with an extract of *Lentinus edodes* mycelium.

Applicants traverse this rejection and withdrawal thereof is respectfully requested. With respect to the restriction of Groups I and II, applicants respectfully note that the claims of each group recite the same method steps of administering the extract that was prepared as directed in the claims. Thus, the claims of Groups I and II only differ in the patient population that is given the extract, i.e. one suffering from a bacterial or viral infection or one suffering from a tumor. As such, the Examiner must necessarily consider the same steps in examining the invention. The impropriety of this restriction is further supported by the fact that claims directed to either methods of treating bacterial/viral infections and methods of treating tumors have been pending since the application was originally filed in 2001. Several office actions and a Notice of Allowability have been issued in the application by the same examiner and the claims were never previously so restricted. Thus, restriction of the claims at this stage is both an inconsistent position to that taken over the past 4 years and it amounts to piecemeal examination.

With regard to the claims of Group III, i.e. claim 38, drawn to a method of activating gamma delta T in vivo with an extract of *Lentinus edodes* mycelium, Applicants further traverse this restriction. The claims of Groups I and II explicitly recite that the extract used in the recited methods of treating tumors or bacterial/viral infection is through the enhanced activity of $\gamma\delta$ T cells. Thus, the mechanism of action of the methods of the claims of Groups I and II is the exact same mechanism as that recited in the claim of Group III. As such, the Examiner would again be

searching the same subject matter. Withdrawal of the restriction and rejoinder of all the claims are respectfully requested.

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 24-25 and 35-37.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact MaryAnne Armstrong, Ph.D., Registration No 40,069 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- Attached is a Petition for Extension of Time.
- Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: Respectfully submitted,
DEC 21 2005

By MaryAnne Armstrong
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Attachment: Our check in the amount of \$450.00 covering the fee set forth in 37 CFR 1.17(a)(2) is enclosed.